IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

WP(C).No. 20402 of 2006(D)

AGAINST THE ORDER IN EP.NO.424 OF 2004 IN
IS.273/2000 of MUNSIFF COURT, KODUNGALLUR

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PETITIONER:

JOMON, S/O. VARGHESE,
KANJIRATHINGAL HOUSE, PERINJANAM VILLAGE,
KODUNGALOOR TALUK.

BY ADV. SRI.RAJESH CHAKYAT

RESPONDENTS:

HARIDASAN NAIR, S/O. MADHAVI AMMA,
KARUTHEDATH HOUSE, PERINJANAM VILLAGE,
KODUNGALOOR TALUK.

BY ADV. SRI.M.SHAJU PURUSHOTHAMAN
SRI.K.S.RAJESH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.20402/2006

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE EXECUTION PETITIOND ATED 11.6.2004

EXT.P2: COPY OF THE OBJECTIOND ATED 27.7.2005

EXT.P3: COPY OF THE PROOF AFFIDVIT FILED BY THE DECREE HOLDER/RESPONDENT DATED 22.10.2005

EXT.P4: COPY OF THE ORDER IN E.P.424 IN O.S. 273/2000 DATED 10.2.2006.

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 20402 of 2006

Dated this the 28th day of June , 2007

JUDGMENT

Ext.P4 order passed by the Execution Court directing arrest and detention of the petitioner is under challenge in this writ petition under Article 227. The learned counsel for the petitioner impugns Ext.P4 on the ground that it is totally a non speaking order and that the same is not preceded by any enquiry or finding regarding the financial ability of the petitioner to pay the decree debt. The learned counsel for the respondent, per contra, would submit that the writ petition is not maintainable since a remedy by way of revision is provided under Section 115 of the Code of Civil Procedure.

2. I have considered the rival submissions. I find that while admitting this writ petition this court granted stay imposing a condition that the petitioner pays or deposits in the court below for payment to the decree holder an amount of

Rs.15,000/- within two months from 2.8.2006. It is stated before me by the learned counsel for the petitioner that the above condition was not complied with by the petitioner. I am of the view that a party who does not comply with the condition imposed by this court while passing the interim order, cannot be entitled for favourable exercise of discretion by this court and much less under Article 227 of the Constitution. This is not a case where the decree holder did not adduce any evidence. The Decree holder got himself examined as witness. I am told that there was no effective cross examination of the decree holder. The judgment debtor who could have adduced evidence did not adduce any counter evidence. This is indicated in Ext.P4 itself.

3. Under the above circumstances, I am of the view that the maximum relief that the petitioner can aspire for is indulgence. The writ petition will stand disposed of issuing the following directions:

4. The petitioner is directed to pay the sum of Rs.15,000/- (Rupees Fifteen Thousand) as ordered by this court on 2.8.2006 at least by the last day of July 2007. After the petitioner makes such payment, he will produces receipt before

the court below. The court below on noticing the receipt will keep Ext.P4 in abeyance subject to the following conditions:

5. The petitioner shall continue to pay towards decree debt every month commencing from the last day of August 2007 till such time the entire decree debt is wiped off at the rate of Rs.4,000/-. If any default is caused by the petitioner in remitting the instalemnts, he will forfeit the benefits of this judgment. Once the petitioner remits instalments without fail and he becomes confident that the entire decree debt is wiped of, it is open to him to file an application before the court below for recording full satisfaction of the decree debt. If such application is received, the court below will hear the parties and take a correct decision on the same.

PIUS C. KURIAKOSE,

JUDGE.

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